IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 26 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)

Versus

R.R. PATEL BY L/H K.R. PATEL - Respondent(s)

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Appearance :
MR RP BHATT for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.
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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 10/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1.Income Tax Appellate Tribunal, Ahmedabad Bench “C”, has referred the following question under Section 27(1) of the Wealth Tax Act, 1957 (the Act) at the instance of the Commissioner of Income Tax.

“Whether, the Appellate Tribunal is right in law and on facts in canceling the order made by the Commissioner of Wealth Tax under Section 25(2) of the Wealth Tax Act, 1957?”

2.The assessment years are 1980-81, 1981-82 and 1982-83. The valuation dates for the three years respectively are Aso Vad Amas of Samvat Years 2035, 2036 and 2037, the corresponding dates being 27/10/1979, 7/11/1980 and 27/10/1981. The assessee filed his returns of wealth for all the three years. The wealth consisted of movable and immovable properties. The assessee was having partnership share in a firm known as M/s Gum Products; the share was

31% for assessment year 1980-81, and 12% for each of the remaining two assessment years. The partnership firm was owner of an immovable property known as `Ellisbridge Milkat' and the said property was valued at Rs.21,641/- in each of the three years. The basis of arriving at this value was the fact that the property was wholly rented property fetching yearly gross rent of Rs.2,064/- only. The assessee had included his share of this immovable property owned by the partnership firm while returning the wealth in the form of partnership share. The assessments came to be framed on 15/3/1985, 25/3/1986 and 25/3/1986 for the three years under consideration.

3. Sometime in the year 1986, the Central Government came out with a scheme known as Amnesty Scheme which enabled assessees who had not disclosed their correct income / wealth in the returns already filed and in case of

declaration under the Scheme, an assessee would become entitled to avail of immunity from penalty / prosecution. Accordingly, the assessee filed revised returns for all the three years on 17/9/1986, disclosing jewelry worth Rs.40,000/-, Rs.45,000/- and Rs.60,000/- which had not been disclosed in the original returns. The assessee paid self-assessment tax under section 15-B of the Act while filing the revised returns. The assessing officer issued notices under Section 17 of the Act, but vide communication dated 17/9/1986, the assessee informed the assessing officer to treat the revised returns already filed as returns in response to notice under Section 17 of the Act. The assessing officer framed assessment orders on 24/11/1986 for all the three years, accepting the wealth declared by the assessee under the Amnesty Scheme.

4.On 21/12/1987, the assessing officer wrote to

the assessee to show cause as to why appropriate action should not be initiated, because in the opinion of the assessing officer, the value of the share in Ellisbridge Milkat property had been shown by the assessee at a lesser figure as against the correct market value. The assessee tendered his explanation by letter dated Nil. The Tribunal has recorded that thereafter whether any further proceedings took place or not, is not available on the record.

5. However, on 13/10/1988, the Commissioner of Wealth Tax initiated action under Section 25[2] of the Act, as according to him, the assessments framed on 24/11/1986 were erroneous and prejudicial to the interest of the revenue. The assessee filed written submissions on 1/11/1988. However, the Commissioner did not accept the explanation tendered and vide order dated 22/2/1989, set aside assessments for all

the three years to enable the assessing officer to make proper assessments taking into account the observations made by him in his order. It was recorded by the Commissioner that the Ellisbridge Milkat had been incorrectly valued at Rs.21,641/-, because, on 3/9/1981, the assessee / partnership firm had entered into an agreement for sale of the said property for a price agreed at Rs.11,25,000/-. That the valuation date for assessment year 1982-83 being 27/10/1981, and the agreement for sale having been entered into on 3/9/1981, the assessee had not disclosed correct wealth. That subsequently, in fact, the property had been sold out at the agreed price on 9/11/1982. Insofar as the earlier two years were concerned, namely assessment years 1980-81 and 1981-82, the Commissioner did not accept that the gross rent fetched by the property was correct rent considering the location of the property and the surrounding development.

6.The assessee carried the matter in appeal before the Tribunal. The order of Commissioner was challenged on the ground of limitation as well as on merits. The Tribunal accepted both the challenges. In relation to the order being barred by limitation, it was found by the Tribunal that the subsequent assessment orders dated 24/11/1986 were passed for a limited purpose and the assessment of the property in question had been made on 15/3/1985, 25/3/1986 and 25/3/1986. Therefore, according to the Tribunal, the Commissioner could not have invoked his powers under Section 25(2) of the Act in light of the statutory period of limitation of two years.

7.The Tribunal further held on merits of the controversy that it was not in dispute that the Ellisbridge Milkat property had been acquired in 1960 and had remained since then a tenanted

property. That there were disputes between the landlord and the tenants regarding eviction and on the respective valuation dates, the matter of eviction of the tenants was subjudice in revisional proceedings before the competent court. Thus, according to the Tribunal, the best method of valuation of such property would be rental method only considering the nature of pending litigation and any other method could not have been adopted for valuing the property. That considering the nature of pending litigation, any prospective buyers would have been dissuaded from entering into a transaction to purchase the property. The combined effect of all these factors, according to the Tribunal, went to show that the price of Rs.11,25,000/- did not represent the fair market value of the property in question on the relevant valuation dates. Therefore, according to the Tribunal, there was no error in the assessments framed by the assessing officer,

and hence, no prejudice had occasioned to the interest of revenue. Accordingly, the Tribunal did not uphold the order of Commissioner on merits also.

8.Mr.B.B.Naik, the learned standing counsel for the applicant revenue has been heard. Though served, there is no appearance on behalf of respondent assessee.

9.In light of the facts narrated hereinbefore, in the fact situation of the present case, it is not necessary to enter into the controversy as to whether the order of the Commissioner made under Section 25(2) was or was not barred by limitation.

10.As the findings recorded by the Tribunal go to show, the Tribunal has found as a matter of fact that the price at which the agreement for sale was entered into, and subsequently the

property was sold, did not represent the fair market value of the property in question on the relevant valuation dates. Once this is the position, and it was not disputed on behalf of the revenue, that this is a finding of fact, it is not possible to uphold the action of the Commissioner under Section 25(2) of the Act. The entire basis for initiating action under Section 25(2)of the Act is the agreement for sale entered into on 3/9/1981. At the cost of repetition, it is required to be stated that the Tribunal has found that the said amount mentioned in the agreement for sale did not represent the correct fair market value of the property on the relevant valuation dates and the revenue has not been able to point out any material on record to dispute the said finding of fact. In absence of any evidence to show that the aforesaid finding of the Tribunal suffers from any infirmity in any manner whatsoever, it is not possible to take any

other view of the matter.

11.In the result, the Tribunal's order is upheld on merits, without going into any discussion on the issue of limitation. The Tribunal was right in law and on facts in cancelling the order made by the Commissioner of Wealth Tax under Section 25(2)of the Act. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

12.The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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